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Summerlin, D.J. orcid.org/0000-0002-1559-9365 (2019) Using the 'Old Law' in twelfth-century decretal collections. In: Rolker, C., (ed.) New Discourses in Medieval Canon Law Research: challenging the master narrative. Medieval Law and its Practice, 28 . Brill , Leiden , pp. 145-169. ISBN 978-90-04-39438-4

https://doi.org/10.1163/9789004394384_010

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Using the ‘Old Law’ in Twelfth-Century Decretal Collections

Danica Summerlin

The years surrounding 1140 represent one of the most repeatedly-observed breaks in the history of canon law. Scholars focus, by and large, on collections compiled either before or after 1140 although there are as always exceptions who focus more broadly on the period 1100 to 1250. Nevertheless, the idea that 1140 marked the end of something old and the beginning of something new remains fundamental to narratives of legal change in the Middle Ages. From the nineteenth century to the present, the pivot for this moment of change has been the appearance and dissemination of Gratian’s *Decretum*, in one of its many versions. Gratian’s collection and its effects have been referred to as critical to understanding how and why law changed. With a renewed interest in earlier collections evident over the last thirty years now is the time to ask how the later-twelfth century collections can be assimilated into the new narrative that is appearing following Anders Winroth’s shake-up of work on Gratian in the mid-1990s.¹

Most of the studies in this volume have looked at the period leading up to 1140, or have taken a broader, more general approach. Instead, I want to ask a very specific question: how significant was the change that affected the sources of canonical collections compiled in the period 1140 to 1234? To adopt a cliché, any chosen end-point has to be accompanied by a subsequent beginning, and a fundamental part of any argument positing Gratian as a critical pivot and the end of an old era presupposes that what followed was something new and different. That idea of Gratian as a major turning point, and in particular the catalyst for fundamental change, rests on a mixture of different rationales and reasonings. The most succinct, enunciated by Landau, noted three fundamental reasons for the importance of the *Decretum Gratiani*: its ability to witness the depth and quality of contemporary intellectual

* In this article, twelfth-century decretals are quoted by their numbers in Jaffé’s *Regesta* and the Holtzmann-Kartei; if the decretals in question is not found there, this is indicated by ‘JL –’ and ‘WH –’, respectively. The Holtzmann-Kartei is available online at http://www.kuttner-institute.jura.uni-muenchen.de/holtzmann_formular.htm.

¹ Anders Winroth, *The Making of Gratian’s Decretum*, Cambridge Studies in Medieval Life and Thought, Fourth Series 49 (Cambridge, 2000).

horizons, the role that the *Decretum* played in distinguishing canon law in Latin Christendom from its eastern relative, and the *longue durée* of a collection which directly shaped a legal tradition. By using *dicta* and dialectic, Gratian contributed to the formation of ‘a new legal science’.² In this, and implicitly, Landau was building on a simpler point: that the *Decretum* came to be quickly incorporated into the teaching curriculum of the schools, as shown by the speed with which glosses and *summae* appeared, and thus shaped the thought of the men who used it. Charles Duggan also saw the *Decretum*’s importance in terms of its eventual influence. In contrast to Landau, however, and perhaps influenced by a general distaste for Whig history present in post-war Anglophone academia, Duggan was more interested in the after-effects of the *Decretum*’s appearance. He stressed that “the academic success of Gratian’s compendium [...] created the conditions for, and encouraged the emergence of, the so-called ‘new law’ (*ius novum*), based on current papal decisions and conciliar decrees.”³ Duggan and Landau, however, also show a more fundamental disjuncture: trained in law, Landau’s argument builds on a *longue durée* interpretation of legal history, while Duggan, who was interested particularly in medieval English history, focussed on different aspects of the *Decretum*’s story.⁴

This study takes an unashamedly historical focus in investigating one of the after-effects of the *Decretum*’s popularity, and in particular the one which has received the most attention and, according to much traditional scholarship, had the greatest impact: the upsurge in the importance of papal decretals in medieval canon law, and the appearance of the decretal collections. It asks whether these presented something new and innovative in the context of earlier canon law. All too often, the framing of this question leaves much to be desired: Charles Duggan, who used the term ‘new law’ (*ius novum*) frequently, never explained where it came from and precisely why it became so critical, although he did at least make his definition clear. The first, and inevitably longest, section therefore focusses on the historiographical interpretations of the later-twelfth century collections, and particularly upon

² Peter Landau, “Gratian and the *Decretum Gratiani*,” in *The History of Medieval Canon Law in the Classical Period: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008), pp. 22–54, at pp. 53–54.

³ Charles Duggan, “Decretal Collections from Gratian’s *Decretum* to the *Compilationes antiquae*: The Making of the New Case Law,” in *The History of Medieval Canon Law in the Classical Period: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008), pp. 246–92, at p. 247.

⁴ Something similar can be said for the debates surrounding marriage law under Alexander III, summarized for example in Charles Donahue, “Johannes Faventinus on Marriage,” in *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, D.C., 2006), pp. 179–97, at p. 195.

the process by which they came to be seen, by scholars of canon law and more broadly, as representing an entirely new formulation of law that appeared only after the widespread dissemination of the *Decretum* from 1140. The second segment looks at the decretal collections' development, before finally moving on to a broad analysis of the collections *en masse*, using them to investigate how far collections known to have been compiled after c.1140 were composed principally of later texts. As the starting point for a longer and more detailed investigation, it is necessarily brief yet wide-ranging; nevertheless, it hopefully represents a step toward a new appraisal of later-twelfth century canonical collections.

I. Gratian as a Pivot, and the Appearance of the Decretal Collections after c.1160

It is fairly well established that texts formalised in the years before 1140 continued to be used in the years that followed. Aside from the *Decretum* itself, which contained thousands of earlier texts, other collections continued to be seen as useful: many of the *paleae* added into later-twelfth century copies were taken directly or indirectly from Burchard of Worms' *Decretum*, while at least one copy of Burchard was copied after 1150.⁵ Around a third of surviving *Panormia* manuscripts were copied after the mid-twelfth century, and some of these have gloss references to Gratian.⁶ In studies on the twelfth-century decretal collections, however, references to these earlier texts are limited. Peter Landau demonstrated how certain decretal collections and some of the *summae* borrow extensively from earlier collections, but his studies remain brief introductions to the problem.⁷ As only two decretal collections have been edited since the publication of Holtzmann's notes in 1982 and the intervening period has seen a deepening of interest in canon law before 1140, the earlier absence of serviceable editions of pre-Gratian collections provides one explanation for this lacuna.⁸ Yet the very

⁵ On the *paleae*, see Rudolf Weigand, "Zusätzliche 'Paleae' in fünf Dekrethandschriften. Domenico Maffei zum 65. Geburtstag gewidmet," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 78 (1992), 62–120; Rudolf Weigand, "Versuch einer neuen, differenzierten Liste der Paleae und Dubletten im Dekret Gratians," in *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*, ed. Peter Linehan, *Studia Gratiana* 29 (Rome, 1998), pp. 883–99 with a list at pp. 897–99; most recently, Jürgen Buchner, *Die Paleae im Dekret Gratians. Untersuchung ihrer Echtheit*, Pontificum Athenaeum Antonianum 127 (Rome, 2000); for Reims, Bibliothèque municipale, 674 see most recently Peter Landau, "Die Dekretsumme 'Tractatus Magister' und die Kanonistik in Reims in der zweiten Hälfte des 12. Jahrhunderts," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 100 (2014), 132–52.

⁶ The best evidence for this remains the analysis undertaken by Martin Brett, available in his "Table of Panormia MSS," at <https://ivo-of-chartres.github.io/panormia/mslist.pdf>, with date/revision stamp 2014-06-03/b8a41.

⁷ Peter Landau, "Vorgratianische Kanonessammlungen bei Dekretisten und in frühen Dekretalensammlungen," in *Proceedings of the Eighth International Congress of Medieval Canon Law, San Diego, University of California at La Jolla, 21–27 August 1988*, ed. Stanley Chodorow, MIC Subsidia 9 (Vatican City, 1992), pp. 93–116, at pp. 99–108.

⁸ The results of Holtzmann's years of research were published in 1979 by Christopher and Mary Cheney; this

point of interest about the decretal collections, their extensive use of ‘new’ law, has had a greater effect. It counts against detailed studies of the collections’ pre-Gratian content, because the main focus relates to ideas of papal government. Even in Landau’s seminal article on the pre-Gratian contents of the decretal collections, there is a sense of surprise around the inclusion of the earlier texts, as if they have no place in the newer law.

The nomenclature surrounding the decretal collections provides an additional and more compelling explanation for overlooking their earlier contents, however. Although the Psuedo-Isidorian forgeries have frequently been referred to the ‘False Decretals’, for historians of canon law the decretal collections are a specific sub-set of canonical collections compiled during the so-called ‘classical’ period of canon law, which ran from c.1140 to c.1234.⁹

Walther Holtzmann noted 62 such collections in the 1960s, and the number has since risen.¹⁰ Their defining feature is presented as the relatively high proportion of recent papal letters incorporated into the contents: almost the entire collection, in the example of the ‘Worcester’ collection compiled in southern England in the 1180s, where only three out of 274 chapters were not letters written by Alexander III.¹¹

The term ‘decretal collection’, although used widely by Holtzmann, was not coined by him. Instead, it was popularised by the publication, in 1913, of Heinrich Singer’s analysis of the *Collectiones Compendiensis, Sangermanensis* and *Abrincensis*, all of which he referred to as ‘decretal collections’.¹² Ever since, it has become widely employed as the catch-all term for

remains the best introduction to most of the collections: Walther Holtzmann, *Studies in the Collections of Twelfth-Century Decretals*, ed., rev., and trans. Christopher R. Cheney and Mary G. Cheney, MIC Corpus collectionum 3 (Vatican City, 1979) [henceforth cited as Holtzmann-Cheney]; the additional two collections are the *Francofurtana*, in *Die Collectio Francofurtana. Eine französische Decretalensammlung. Analyse beruhend auf Vorarbeiten von Walther Holtzmann* †, ed. Peter Landau and Gisela Drossbach, MIC Corpus collectionum 9 (Vatican City, 2007) and the *Cheltenhamensis*, in *Die Collectio Cheltenhamensis. Eine englische Decretalensammlung. Analyse beruhend auf Vorarbeiten von Walther Holtzmann* †, ed. Gisela Drossbach, MIC Corpus collectionum 10 (Vatican City, 2014). In contrast, the intervening period has seen advances in the study of earlier texts, including Brett’s, Brasington’s and others’ Ivo site, available (at 30 May 2015), at <https://ivo-of-chartres.github.io>, and Linda Fowler-Magerl’s indispensable *Clavis Canonum: Selected Canon Law Collections before 1140: Access with Data Processing*, MGH Hilfsmittel 21 (Munich, 2005); the *Clavis* database is also available at <http://www.mgh.de/ext/clavis/>. Professor Gisela Drossbach is in the process of completing a *Regesta Decretalium* and has studied a number of other collections in some detail, with analyses of others forthcoming including the *Collectio Petrihusensis* and its sister collection, the *Cottoniana*; see also her recent “Die Collectio Victorina prima—Dekretalenrecht in Saint-Victor,” in *Diligens scrutator sacri eloquii. Beiträge zur Exegese- und Theologiegeschichte des Mittelalters. Festgabe für Rainer Berndt SJ zum 65. Geburtstag*, ed. Hanns Peter Neuheuser, Ralf M.W. Stammberger, and Matthias M. Tischler, Archa verbi. Subsidia 14 (Münster, 2016), pp. 349–64.

⁹ For a list, see Holtzmann-Cheney (see above, n. 8), pp. xx–xxxi; see also Gérard Fransen, *Les décrétales et les collections de décrétales*, Typologie des sources du moyen âge occidental 2 (Turnhout, 1972).

¹⁰ Holtzmann-Cheney (see above, n. 8), p. xxxii.

¹¹ London, British Library, Royal 10.A.ii, fols 5–62; Hans-Eberhard Lohmann, “Die Collectio Wigorniensis (Collectio Londoniensis regia). Ein Beitrag zur Quellengeschichte des kanonischen Rechts im 12. Jahrhundert,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 22 (1933), 36–187, at pp. 42, 161.

¹² Heinrich Singer, *Neue Beiträge über die Dekretalensammlungen vor und nach Bernhard von Pavia*,

the canonical collections compiled in the late-twelfth century. An unfortunate consequence is that scholars have followed, if not unquestioningly, then nevertheless without much consideration. In his *Repertorium*, Stephan Kuttner accepted the distinction between pre-Gratian and ‘decretal’ collections; despite noting that the decretal collections did contain other material, he believed the term to be appropriate.¹³ More recently, Charles Duggan rarely, if ever, looked to the earlier material present in the decretal collections. There are explanations for this oversight: Duggan’s primary interest was the English collections, which contain a lower proportion of earlier material, and his focus the contribution made by papal letters to the broader field of medieval history, rather than assessing the development of law.¹⁴ At the same time, Duggan was bound into a particular way of conceiving ‘new law’: in his own words, it was “defined in recent conciliar legislation and, still more significantly, in papal decretal letters addressed to many thousands of recipients throughout Latin Christendom.”¹⁵ Decretal collections were the vehicles of that new law, and as a result any earlier texts they included could be overlooked.

Such a narrow view of the collections is, however, comparatively recent and markedly different to earlier perceptions. In the late-nineteenth century works of Schulte and Friedberg, only the *Liber extra* is consistently referred to as a decretal collection.¹⁶ Even Friedberg’s analysis of nine collections, all of which are now referred to as decretal collections, used the term ‘Collection of canons’ (‘Canones-Sammlungen’) in its title, rather than the more specific ‘Dekretalensammlungen’ employed by Singer. Not all nineteenth-century historians shunned such explicit terminology: while Friedberg later called it a ‘collectio canonum’,

Sitzungsberichte der kaiserlichen Akademie der Wissenschaften, Wien, philosophisch-historische Klasse 171 (Vienna, 1913); reviewed favourably by Friedrich Heyer, “Rezension: Heinrich Singer, Neue Beiträge über die Dekretalensammlungen vor und nach Bernhard von Pavia,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 3 (1913), 615–42

¹³ Stephan Kuttner, *Repertorium der Kanonistik. Prodomus corporis Glossarum*, Studi e testi 71 (Vatican City, 1937), p. 272; see also Walther Holtzmann, “Über eine Ausgabe der päpstlichen Dekretalen des 12. Jahrhunderts,” *Nachrichten von der Akademie der Wissenschaften in Göttingen, philologisch-historische Klasse* 24 (1945), 15–36, at p. 18

¹⁴ E.g. Charles Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London, 1965) and see also the articles reprinted in idem, *Decretals and the Creation of the ‘New Law’ in the Twelfth Century: Judges, Judgements, Equity and Law*, Variorum Collected Studies Series 607 (Aldershot, 1998). As an example, even the article “Decretal Letters to Hungary” (ibid., article no. V) emerges from his interest in the English collections; in this case, specifically *Petrihusensis* and *Cottoniana*: Charles Duggan, “Decretal Letters to Hungary,” *Folia Theologica* 3 (1992), 5–31, at p. 6.

¹⁵ Charles Duggan, “Papal Judges Delegate and the Making of the ‘New Law’ in the Twelfth Century,” in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia, 1995), pp. 172–99, at p. 173.

¹⁶ Johann Friedrich von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart*, 3 vols (Stuttgart, 1875; repr. Clark, N.J., 2000); *Quinque compilationes antiquae, nec non Collectio canonum Lipsiensis*, ed. Emil Friedberg (Leipzig, 1882; repr. Graz 1956); *Die Canones-Sammlungen zwischen Gratian und Bernhard von Pavia*, ed. Emil Friedberg (Leipzig, 1897; repr. Graz, 1957).

when Richter published the first commentary on the *Lipsiensis* collection he referred to it as a decretal collection.¹⁷ Overall, however, in work published in the nineteenth century there is a happy absence of any implicit presumption that the collections which post-dated Gratian only contained papal decretals, an approach which to this day affects the dating of earlier collections.¹⁸

A major problem with the later-twelfth century decretal collections is therefore in part their definition. Decretal collections are, as the name suggests, collections of decretals, which are letters sent by the pope that have legal relevance—because they are contained in a decretal or other canonical collection.¹⁹ While most of the letters are obviously legally significant—to give one example, *Sicut dignum est* which explained *Si quis suadente*²⁰—a number of ‘decretals’ in the collections were in fact sections of larger letters that may have possessed no great legal innovation, including the fragment of a tithe privilege that made its way into a number of collections including Bernard of Pavia’s *Breviarium extravagantium*.²¹ Equally, many letters which were *responsa*, i.e. responses to questions on legal matters, or represent disputes and cases were never incorporated into the legal collections. At least one immense collection of letters, those of Henry, archbishop of Reims, found in Arras, Bibliothèque municipale, 964 and published by Martène and Durand, is a collection of letters of use to the archbishop.²² While not necessarily possessing its own peculiar legal importance, a number of its letters found their way into later collections such as *Brugensis*; moreover, the letters in the Arras manuscript demonstrate the quotidian processes of ecclesiastical government, if not at the absolute highest levels, then at the most locally significant ones.²³ Meanwhile, the

¹⁷ Emil Ludwig Richter, *De inedita decretalium collectione Lipsiensi* (Leipzig, 1836).

¹⁸ See for example the fact that most collections contained in Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140): A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law (Washington, D.C., 1998), are dated to pre-1140 on the basis that they would not have been compiled after.

¹⁹ Fransen, *Les décrétales* (see above, n. 9), pp. 7, 12, comments on the ‘custom’ to refer to all letters in canonical collections as decretals, but see also Duggan, “Decretal Collections” (see above, n. 3), pp. 246–47.

²⁰ JL 12180 [WH 929]; see also Katherine Christensen, “The ‘Lost’ Papal Gloss on *Si quis suadente* (C.17 q.4 c. 29): John of Salisbury and the Canonical Tradition in the Twelfth Century,” *Bulletin of Medieval Canon Law*, n.s. 18 (1988), 1–11; Richard H. Helmholz, “*Si quis suadente*: Theory and Practice,” in *Proceedings of the Seventh International Congress of Medieval Canon Law, Cambridge, 23–27 July 1984*, ed. Peter Linehan, MIC Subsidia 8 (Vatican City, 1988), pp. 425–38.

²¹ JL 14173 [WH 895]: *1 Comp.* 3.26.12, where its source is given as “Item ex privilegio Alex.”.

²² Arras, Bibliothèque municipale, 964; Edmund Martène and Ursine Durand, *Veterum scriptorum et monumentorum historicorum, dogmaticorum, moralium amplissima collectio*, 9 vols (Paris, 1724–33), 2:622–1011. Ludwig Falkenstein, “Alexandre III et Henri de France: conformités et conflits,” in *L’église de France et la papauté (Xe–XIIIe siècle) / Die französische Kirche und das Papsttum*, ed. Ralf Große, Studien und Dokumente zur Gallia Pontificia 1 (Bonn, 1993), pp. 103–76, at pp. 104–05 summarizes the contents of the manuscript and gives an account of the historiography.

²³ For *Brugensis*, see Ludwig Falkenstein, “Zur Entstehungsort und Redaktor der Collectio Brugensis,” in *Proceedings of the Eighth International Congress of Medieval Canon Law, San Diego, University of California*

Belverensis decretal collection is found within a collection of the letters of Gilbert Foliot, and the collection named *Fontanensis* by Holtzmann is preserved in the cartulary of Fountains Abbey.²⁴ From the perspective of using canon law to understand ecclesiastical government, ignoring these other sources of legal argumentation is a critical oversight even though they contributed little to the ‘development’ of the ‘new law’ in the twelfth century. Within that context they represent unfinished tangents in canon law studies, but to only perceive them as such ignores the reality that they must have served a particular purpose, even if that purpose is now elusive.

By limiting the definition of a decretal and focussing solely on the decretal collections, the variety and scope of later-twelfth century law is therefore often overlooked. Given the importance of the system of direct papal law-making that the collections represent, an investigation of its formulation is sensible, but it has to be seen in its broader context. At the same time as the decretal collections were being compiled, for example, canonists were creating abbreviations and alternative versions of the *Decretum Gratiani*. Omnebene’s *Abbreviatio decretorum* survives in nine manuscripts, more than any single version of a pre-*Compilatio prima* decretal collection, and equal to the number of surviving complete manuscripts of the largest family.²⁵ Rather than presenting a straightforward shortening of the *Decretum*, however, Omnebene changed some of its structure; other compilers of abbreviations added canons and excerpts from the *summae*.²⁶ Laborans, a cardinal in Alexander III’s curia with legal training, even compiled a *Transformatio decretorum* in around 1182.²⁷ It combined selected contents of the *Decretum* with decretals and tens of other

at La Jolla, 21–27 August 1988, ed. Stanley Chodorow, MIC Subsidia 9 (Vatican City, 1992), pp. 117–51, at p. 124 for the link to Arras, Bibliothèque municipale, 964, where he gives further literature.

²⁴ Duggan, *Decretal collections* (see above, n. 14), pp. 71–73; Holtzmann-Cheney (see above, n. 8), pp. 100–15 with an analysis on 103–15; Peter Landau, “Die *Collectio Fontanensis*: A Decretal Collection of the Twelfth Century for an English Cistercian Abbey,” in *Law as Profession and Practice in Medieval Europe: Essays in Honor of James A. Brundage*, ed. Kenneth Pennington and Melodie Harris Eichbauer (Aldershot, 2011), pp. 187–204, at pp. 190–92.

²⁵ On Omnebene, see Kenneth Pennington and Wolfgang P. Müller, “The Decretists: The Italian School,” in *The History of Medieval Canon Law in the Classical Period: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008), pp. 121–73, at p. 124, and the literature therein. The family in question is *Bambergensis*, see the analysis by Walter Deeters, *Die Bambergensisgruppe der Dekretalensammlungen des 12. Jahrhunderts* (Bonn, 1954).

²⁶ See Pennington and Müller, “The Decretists,” pp. 123–25, which includes a summary of and references to the earlier literature; on the abbreviations themselves, see e.g. Alfred Beyer, *Lokale Abbreviationen des Dekret Gratiani. Analyse und Vergleich der Dekretalabbreviaturen “Omnes leges aut divine” (Bamberg), “Humanum genus duobus regitur” (Pommersfelden), und “De his qui intra claustra monasterii consistunt” (Lichtenthal, Baden-Baden)*, Bamberger theologische Studien 6 (Frankfurt and New York, 1998). More recently on the subject of abbreviations, see Atria Ann Larson, “An *abbreviatio* of the First Recension of Gratian’s *Decretum* in Munich?,” *Bulletin of Medieval Canon Law*, n.s. 29 (2011–12), 51–118.

²⁷ von Schulte, *Quellen und Literatur* (see above, n. 16), 1:148–49; Johannes Brixius, *Die Mitglieder des Kardinalkollegiums von 1130–1181* (Berlin, 1912), pp. 63–64; Kuttner, *Repertorium* (see above, n. 13), pp. 267–

texts in two parts that bear little resemblance to either recension of Gratian's compilation, but had a very limited circulation: only one known manuscript survives, believed to be Laborans' autograph.²⁸ As well as those drastic alterations to its structure, the addition of the *paleae* in some texts demonstrates the gradual enlargement of the *Decretum*.²⁹ To put it bluntly, until later in the period, the vitality and innovation connected with twelfth-century canon law did not become limited to the collectors of decretals and, in any case, the strict terminology employed within studies of canon law all too easily, and often accidentally, creates an inflexible paradigm in which these nuances are obscured.

The work of Walther Holtzmann, who did more than any other person since Friedberg to advance the study and understanding of later-twelfth century canonical collections, provides a salutary example. Despite being highly aware of the presence of earlier texts in collections including *Lipsiensis* and the *Breviarium*, Holtzmann rarely took them into account in his analyses of the collections. On at least one occasion he refused to refer to a gathering of such texts as a true collection, despite the fact that it preceded two sections of a decretal collection now recognized as being highly important, *Dunelmensis I*.³⁰ In this instance, neither Charles Duggan nor the Cheneys had much sympathy with his approach.³¹ A key reason for this was Holtzmann's more legalistic definition of a collection: he wanted an underlying organising principle that underpinned the gathering of the texts. Where such a principle was absent, he purposefully overlooked the accumulation of canonistic material. In contrast, the importance of florilegia and farraginous collections, particularly for understanding the relationships between earlier medieval canonical collections, has become increasingly apparent in the work of Linda Fowler-Magerl and others; using similar techniques for the later period seems an increasingly sensible way of proceeding.³²

68; Norbert Martin, "Die 'Compilatio decretorum' des Kardinal Laborans," in *Proceedings of the Sixth International Congress of Medieval Canon Law, Berkeley, California, 28 July–2 August 1980*, ed. Stephan Kuttner and Kenneth Pennington, MIC Subsidia 7 (Vatican City, 1985), pp. 125–38, at p. 125; Stefan Weiß, *Die Urkunden der päpstlichen Legaten von Leo IX. bis Coelestin III. (1049–1198)*, Beihefte zu J.F. Böhmer, Regesta Imperii 13 (Cologne, 1995), pp. 269–70.

²⁸ Norbert Martin, *Die Compilatio Decretorum des Kardinals Laborans. Eine Umarbeitung des Gratianischen Dekrets aus dem 12. Jahrhundert* (Heidelberg, 1985), summarized in idem, "Die 'Compilatio Decretorum'" (see above, n. 27).

²⁹ Marked '*palea*' and with square brackets in Friedberg's edition; see for example the copy of the *Decretum* in Salzburg, Stiftsbibliothek Erzabtei Sankt Peter, a.XI.9, in which a number of texts are written into the margins. For the *paleae* in general, see Weigand, "Zusätzliche 'Paleae' in fünf Dekrethandschriften" (see above, n. 5).

³⁰ See the Cheneys' editorial comment in Holtzmann-Cheney (see above, n. 8), p. 75.

³¹ Charles Duggan, "A Durham Canonical Manuscript of the Late-Twelfth Century," *Studies in Church History* 2 (1965), 179–85; Duggan, *Twelfth-Century Decretal Collections* (see above, n. 14), pp. 78–79, deals extensively with the collection.

³² Linda Fowler-Magerl, "The Collection and Transmission of Canon Law along the Northern Section of the Via Francigena in the Eleventh and Twelfth Centuries," in *Bishops, Texts and the Use of Canon Law around 1100: Essays in the Honour of Martin Brett*, ed. Bruce Clark Brasington and Kathleen G. Cushing, Church, Faith and

As limiting as Holtzmann's focus on collections which fulfilled his specific criteria, and emanating from a similar perspective, was Kuttner's overwhelming interest in only those *Dekretanhänge*—the appendices of canonical texts sometimes found in *Decretum* manuscripts—which contained recent papal decretals. A case in point is Paris, Bibliothèque nationale, lat. 15001. The main content of the second half of this manuscript is a copy of *Quoniam egestas*, a *Decretum* abbreviation that dates to the 1150s or 1160s.³³ There is also a short canonical collection, a handful of decretals and the canons of the 1163 council of Tours. Despite the fact that the collection must have been copied out after 1148, as it incorporates a canon from Eugenius III's council at Reims, Kuttner only mentioned the abbreviation, the three decretals and the later conciliar canons in his *Repertorium*, overlooking the rest of the manuscript's canonical contents. His focus is understandable given that in the 1930s, scholars were less aware of the variety, number, and sophistication of the earlier collections, presenting them instead as means to an end: the creation of the *Decretum* and papal codifications of law. Since that time, however, huge advances made in understanding earlier collections and the increasing awareness that earlier manuscripts continued to be copied make such an approach less amenable.

II. Decretals and Decretal Collections

Despite the advances toward a more nuanced understanding of the continued role of earlier texts in the century or so after Gratian, the outline development of the decretal collections remains essentially unchanged since the time of Kuttner and Holtzmann. It presents a procession of collections from simple to most sophisticated: first came *Dekretanhänge*, then primitive decretal collections, then systematic decretal collections, and finally the *Breviarium extravagantium* of Bernard of Pavia, completed by 1191 in five books, each divided into multiple titles.³⁴ Such a progression is highly teleological; it also presupposes that the urge to expand collections such as Gratian took the same form in all areas of Europe. In fact, the only

Culture in the Middle Ages (Aldershot, 2008), pp. 129–39, e.g. at pp. 131–32, which defines a farrago as “an accumulation of canon law material with no apparent internal order,” before describing some examples from northern France.

³³ The canonical material is Paris, Bibliothèque nationale de France, lat. 15001, fols 121va–246va. The collection is fols 122v–123v, 125r–126v. Kuttner mentions three decretals on fol. 122 and the canons of Tours on fol. 237ra–va in Kuttner, *Repertorium* (see above, n. 13), pp. 286–87, but see also Stephan Kuttner, “The ‘Extravagantes’ of the *Decretum* in Biberach,” *Bulletin of Medieval Canon Law*, n.s. 3 (1973), 61–71, at p. 67. On the *Abbreviatio Quoniam egestas*, see Kuttner, *Repertorium* (see above, n. 13), p. 263; Rudolf Weigand, “Die Dekretabbreviatio ‘Quoniam Egestas’ und ihre Glossen,” in *Fides et ius. Festschrift für Georg May am 65. Geburtstag*, ed. Winfried Aymans, Anna Egler, and Joseph Listl (Regensburg, 1991), pp. 249–65 and for a description of the Paris manuscript in particular at p. 251.

³⁴ The best recent example of this is found in Duggan, “Decretal Collections” (see above, n. 3), pp. 253–87.

area where the story of the collections has significantly changed concerns the greater awareness of the role played by clerics and collectors working outside of Italy. Despite the predominance of English decretals in the collections, Holtzmann posited an Italian, or more specifically Bolognese, origin for many of the sophisticated works of canon law, especially the *Appendix*.³⁵ Kuttner and Rathbone first announced the existence of a strong Anglo-Norman school of canon lawyers, to which a Rhenish school around Cologne has now also been added.³⁶ Charles Duggan also emphasised the strength of decretals' connection with England, noting that somewhere around half of those contained in the collections were sent to English recipients and commenting on the importance of both Worcester and Exeter in the compilation of key early collections.³⁷ Limiting the systematic collections to Italy is no longer possible; in fact, aside from a few descendants of the *Bambergensis* group and the *Breviarium*, the opposite is true, even when, as in the case of the *Collectio Francofurtana*, the collection contains both pre- and post-Gratian texts.³⁸ The result is a greater awareness of the role played by different centres of canon law, mostly those in Tours and the Capetian heartlands around Paris, including Reims and Sens, while the focus for the early years of the decretal collections remains the English material that became such a significant proportion.³⁹

³⁵ Holtzmann-Cheney (see above, n. 8), esp. pp. 117–18, which although a commentary by the Cheneys points to Holtzmann's general outlook.

³⁶ Stephan Kuttner and Eleanor Rathbone, "Anglo-Norman Canonists of the Twelfth Century," *Traditio* 7 (1949–51), 279–358, and more recently Rudolf Weigand, "The Transmontane Decretists," in *The History of Medieval Canon Law in the Classical Period: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008), pp. 174–210, who nevertheless asserts in his opening sentences that "the title underlines the author's conviction that the Bolognese school set the standard for the academic study of canon law". See also Peter Landau, "Die Kölner Kanonistik des 12. Jahrhunderts. Ein Höhepunkt der europäischen Rechtswissenschaft," in *Vortrag vor dem Rheinischen Verein für Rechtsgeschichte e. V. in Köln am 27. Mai 2008*, ed. Dieter Strauch, Kölner Rechtsgeschichtliche Vorträge 1 (Cologne, 2008), pp. 1–39 and idem, "Die Entstehung der systematischen Dekretalensammlungen und die europäischer Kanonistik der 12. Jahrhunderts," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 65 (1979), 120–48, at p. 133.

³⁷ Duggan pointed to Exeter as a possible locale for a core collection of decretals now only visible implicitly through the *Alcobacensis prima* manuscript: Charles Duggan, "Decretals of Alexander III to England," in *Miscellanea Rolando Bandinelli, Papa Alessandro III*, ed. Filippo Liotta (Siena, 1986), pp. 87–151, at pp. 90–93; in the same article on p. 93 he comments in more depth on the existence of a 'Worcester' selection.

³⁸ *Die Collectio Francofurtana*, ed. Landau and Drossbach (see above, n. 8); see also Gisela Drossbach, "Decretals and the Schools? The *Collectio Francofurtana*," *Bulletin of Medieval Canon Law*, n.s. 24 (2000), 65–77; the only collections which now have an unchallenged Italian provenance are *Parisiensis II* (Paris, Bibliothèque nationale de France, lat. 1566, fols 1r–54v), *Lipsiensis* (Leipzig, Universitätsbibliothek 975, fols 116–53), and the *Breviarium*.

³⁹ Although John Wei and, now, Gisela Drossbach are suggesting also the potential for northern-French origins of the early decretal collections, e.g. John C. Wei, "Gratian's *Decretum* in France and Halberstadt," in *Rechtshandschriften des deutschen Mittelalters. Produktionsorte und Importwege*, ed. Patrizia Carmassi and Gisela Drossbach, Wolfenbüttler Mittelalter-Studien 29 (Wiesbaden, 2015), pp. 363–83, esp. pp. 375–80, 382; idem, "The Later Development of Gratian's *Decretum*," in *Proceedings of the Fourteenth International Congress of Medieval Canon Law, Toronto, 5–11 August 2012*, ed. Joseph W. Goering et al., MIC Subsidia 15 (Vatican City, 2016), pp. 149–61, at pp. 155–56.

To move on to a more detailed investigation of the evidence, rather than simply the historiography, the twelfth-century decretal collections have been closely tied with the growth of the ‘papal monarchy’ via their extensive use of new, papal law. Their importance thus rests on the fact that they represent the first time that recent precedents had more authority than their earlier counterparts, and that letters were considered more or as authoritative as conciliar canons, in contrast to the general impulse toward conservatism perceived in medieval society. In the Treatise on Laws (*Decretum*, D. 1–20), Gratian devoted an entire *distinctio* to the authority of papal decretals ending with the conclusion that “decretals are equal in law to conciliar canons.”⁴⁰ Over the course of the twelfth century, the definition of a ‘decretal’ became a critical part of the commentaries on Gratian, expanding over the period. While Paucapalea limited his discussion on D. 19 to a few lines, the anonymous author the *Summa Parisiensis* took some care over his discussion, and Huguccio, writing in c.1190, even more.⁴¹ Charles Duggan and Jacoba Hanenburg both took great time and joy in explaining how decretals were something new and different, chasing their definitions across the *summae* of the twelfth century, but both also overlooked the fact that decretals had been employed in earlier collections including most notably the Pseudo-Isidorian forgeries. Duggan even expressed surprise that the early canonists took such a long time to understand fully the implications of Gratian’s discussion, seeing it as an automatic change that could not be stopped.⁴²

Nevertheless, the critical reference to ‘new law’ is in the preface to Bernard of Pavia’s *Breviarium extravagantium*, finished sometime between 1189 and 1191, while he was provost of Pavia. Here, Bernard wrote that he had “compiled *extravagantia* from the old and the new law under titles.”⁴³ He expanded slightly in the preface to his *Summa decretalium*, written later in the 1190s to explain the contents of his collection, saying

⁴⁰ Gratian, *Decretum*, D. 20, d.a.c. 1.

⁴¹ *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Giessen, 1890), p. 20; *The Summa Parisiensis on the Decretum Gratiani*, ed. Terence McLaughlin (Toronto, 1952), pp. 20–22; Huguccio, *Summa Decretorum*, Tom. I: Dist. 1–20, ed. Oldřich Přerovský, MIC Corpus collectionum 6 (Vatican City, 2006), pp. 296–328. The increasing complexity of the commentaries is simply, if crudely, demonstrated by the increasing size of their printed editions.

⁴² Duggan, *Twelfth-Century Decretal Collections* (see above, n. 14), pp. 27–39; critiqued in Jacoba Hanenburg, “Decretals and Decretal Collections in the Second Half of the Twelfth Century,” *Tijdschrift voor Rechtsgeschiedenis* 34 (1966), 552–99 at great length, but in this case esp. pp. 552–85.

⁴³ Robert Somerville and Bruce Clark Brasington, *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500–1245* (New Haven and London, 1998), p. 231; *Quinque Compilationes*, ed. Friedberg (see above, n. 16), p. 1: “Ego B. Papiensis prepositus extrauagantia de ueteri nouoque iure sub titulis compilaui”. Although Bernard is one of the better-known canonists, that does not say much: for a relatively recent biography, see the relevant sections in *The History of Medieval Canon Law in the Classical Period: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C., 2008).

the book was titled *extravagantia*; for the most part [they are] decretals [...] the subject matter is made up of decretals and certain useful provisions which Gratian left out—saving fruit new and old for us—in the corpus of canons, in the register of Gregory, and in Burchard [the Brocards].⁴⁴

These two clauses, in two different books, are the key to the idea that the ‘new law’ was the law of the decretals, and in particular the biblical allusion to ‘fruit new and old for us’ (Song of Songs 7:13).

Bernard gives no definition of the dividing line which differentiated the new law from the old, however; nor is there any reference to whether new law was considered more authoritative than its elder sibling. Although the success of the *Liber extra* has led to the term ‘extravagantes’ referring mostly to decretals, in the twelfth century it seems to have been used to refer more broadly to any text taken from neither the *Decretum* nor a pre-existing collection of canon law such as Burchard. Decretals taken from the collections were one source of additional texts; equally, in their *summae* Rufinus and Simon of Bisignano used Burchard as well as a source. At C. 2, q. 6, c. 19, in fact, Simon referred to both Burchard and a collection of *extravagantes*. He employed Burchard as a foil to Gratian, referring obliquely to Burchard 1.68, *Item placuit*, then commenting that Gratian “seems to contradict” it; eventually, he came to the conclusion that “this canon cannot be used in this situation, saving the Master’s peace.”⁴⁵ Later on in the same section of his commentary, he pointed to three letters “in Extra.”⁴⁶ Rufinus, writing slightly earlier than Simon, also employed various other texts not incorporated into Gratian in his commentary, including some taken from Burchard.⁴⁷ Compared to Simon, however, Rufinus used Burchard much more than he referred to recent decretals. Only two appeared in the *summa*: Adrian IV’s *Nobis in eminenti*, sent to the abbot of Pontigny in 1155, and Innocent II’s *Quotiens frater*, sent to a series of Italian bishops at some point between 1138 and 1142.⁴⁸ Singer accepted the tens of Burchard references without much comment.⁴⁹ There is a strong temptation here to reinforce the idea of

⁴⁴ *Prefaces*, trans. Somerville and Brasington (see above, n. 43), p. 232; *Bernardi Papiensis Faventini episcopi Summa decretalium*, ed. Theodor Laspeyres (Regensburg 1860; repr. Graz, 1956). According to the edition, Bernard refers to the sections as ‘Brocardo’, translated by Somerville and Brasington to mean ‘Burchard’.

⁴⁵ Simon of Bisignano, *Summa* to C. 2, q. 6, c. 19, ed. Pier V. Aimone-Braida, *Summa in Decretum Simonis Bisinianensis*, MIC Corpus glossatorum 8 (Vatican City, 2014), p. 133; Burchard of Worms, *Decretum* 1.68.

⁴⁶ Simon of Bisignano, *Summa* to C. 2, q. 6, c. 19, ed. Aimone (see above, n. 45), pp. 133–34: “ut in extra c. Super eo quod” = JL 13162 [WH 649–650]; “ut in extra c. Cum sacrosancta” = JL 12020 [WH –]; “ut in Extra c. Sicut Romana ecclesia” = JL 12293 [WH 944a].

⁴⁷ For a summary, see *Die Summa decretorum des Magisters Rufinus*, ed. Heinrich Singer (Paderborn, 1902), pp. cvi–cx, which gives a resumé of all the other texts employed by Rufinus in his *Summa*.

⁴⁸ Adrian IV, *Nobis in eminenti* = JL 10444 [WH 664]; Innocent II, *Quotiens frater* = JL 8289 [WH 842].

⁴⁹ Rufinus, *Summa*, ed. Singer (see above, n. 47), pp. ciii–cvi.

the ‘new law’ slowly moving from England toward Italy: Peter Landau has recently argued that Simon was writing north of the Alps, whereas Rufinus’ principle geographical attachment remains Bologna; equally, however, Simon wrote around fifteen years after Rufinus, and the explanation could be as simple as there was a greater selection of decretals available and relevant at the time.⁵⁰

Although he gives no indication as to the authority inherent in individual texts, there is certainly a sense of time in Bernard’s collection. Broadly speaking, the titles of the *Breviarium* are arranged chronologically, starting with older texts before moving toward more recent ones. It is difficult to decide whether this is a side-effect of the editorial decision by which the collection was gathered together, or whether it was a more deliberate process on Bernard’s part. To take three examples, in *1 Comp.* 1.15, *De offitio archidiaconi*, there are only five chapters.⁵¹ The first three, including two taken from the corresponding title in *Parisiensis II*, all bear inscriptions that date them earlier than the year 1000. One is an extract from a letter of Gregory the Great; another purports to be “ex libro Romani ordinis”, and the third from a council at Toledo. The final two chapters in the collection, by way of contrast, are both decretals of Alexander III.⁵² In this instance, both 1.15.2 and 1.15.3 were in *Parisiensis II*, while the others were added from other sources. The general distinction between earlier and later sources is evident, if a little murkier, in *1 Comp.* 5.1 and 5.2. The early chapters of both these titles contain a selection of earlier material, followed by decretals of Alexander III and Lucius III, but in both a single chapter is inserted later in the title. In 5.1, for example, the first nine chapters, the equivalent of *2 Par.* 27.1–27.6 with one lacuna and four additions, are followed by *2 Par.* 27.7, a section of Alexander III’s decretal *Licet preter solitum*. After that extract falls a chapter taken from Augustine, with two more letters from Alexander added at the end of the title, neither of which were included in *2 Par.*⁵³ Similarly, in *1 Comp.* 5.2, a text attributed to Deusdedit sits in the midst of a section of Alexandrine decretals, at 5.2.16.⁵⁴ In a similar fashion to the earlier title, this chapter falls in the additions

⁵⁰ Peter Landau, “Simon von Bisignano, Sikard von Cremona und die Mainzer Kanonistik der Barbarossazeit: Zur Biographie des Simon von Bisignano und zur Forschungsgeschichte,” *Bulletin of Medieval Canon Law*, n.s. 28 (2008), 119–44, at pp. 136–38.

⁵¹ *Quinque Compilationes*, ed. Friedberg (see above, n. 16), p. 6.

⁵² *1 Comp.* 1.15.4: Alexander III, *Cum satis sit*, to the archdeacon of Ely = JL 13898 [WH 301]; *1 Comp.* 1.15.5: Alexander III, *Archidiaconis de ecclesiastica*, to the bishop of Worcester = JL 13166 [WH 92].

⁵³ *Quinque Compilationes*, ed. Friedberg (see above, n. 16), pp. 53–54. The two additional decretals are Alexander III, *Cum Petrus*, to a bishop elect in Italy = JL 11338 [WH 292], and Alexander III, *Ex parte tua*, to Roger, bishop of Worcester = JL 11872 [WH 468].

⁵⁴ *Quinque Compilationes*, ed. Friedberg (see above, n. 16), pp. 54–55; *1 Comp.* 5.2, 1–6 all bear early inscriptions.

to 2 Par. 26, *De symoniachis*.⁵⁵ Again, the first seven chapters present a rejigged formulation of the earlier collection, with Alexander's council at Tours coming last (instead of fourth), just prior to a canon from the later council at the Lateran and the papal letters. Regardless of the addition of the *Deusdedit* canon, the rearrangement of these chapters suggests that some concern was taken over the organisation of these texts, with the subsequent structure presenting earlier texts first and following them with more recent extracts.

When he compiled his collection, Bernard obviously re-arranged some sections. Although by no means fool-proof, as a general rule—and for example in 5.2—where he did rearrange extracts taken from *Parisiensis II*, the earlier material falls at the beginning of each title. The pontificate of Innocent II seems to represent the cut-off point for this distinction, with the letters of Innocent and his successors appearing by and large after the earlier material. In fact, in terms of the juxtaposition between 'old' and 'new' law, the correlation of dates here is rather too tempting: in around 1140, the first recension of the *Decretum* had begun to circulate, and it could well be that Bernard, aware of this development, chose to use the *Decretum* as his dividing line.

There is an alternative, however, to continuing the idea that Gratian was the critical pivot. Away from the scholarly charged question of the growth of papal power, the medieval 'old law' could have been perceived as Old Testament law—and, helpfully, 15 extracts taken from the books of Exodus and Leviticus appear in the *Breviarium*.⁵⁶ Equally, when Bernard talks of 'decretals' in his explanation of the collections' contents, there is no automatic limitation on when those decretals were sent. After the letters of Alexander III, the most copious source in the *Breviarium* is the Register of Gregory the Great, with 71 letters, while in total, around a third of the chapters in the *Breviarium* were ascribed to a pre-Gratianic origin, or 315 chapters out of 920.⁵⁷ A blank reading of Bernard's text, with modern knowledge and understanding of the events that occurred after its appearance and particularly the promulgation of the *Liber extra*, could imply that the 'old' law is pre-Gratian, and the 'new' post-Gratian, but Bernard's own writings do not provide any such explanation. Removing the modern perception does not automatically challenge the definition. But it does

⁵⁵ *Canones-Sammlungen*, ed. Friedberg (see above, n. 16), p. 36; Paris, Bibliothèque nationale de France, lat. 1566, fols 12v–13v.

⁵⁶ Peter Landau, "Alttestamentliches Recht in der 'Compilatio Prima' und sein Einfluss auf das kanonische Recht," *Studia Gratiana* 20 (1976), 111–33, at p. 114.

⁵⁷ *Quinque Compilationes*, ed. Friedberg (see above, n. 16), *passim*; the important point details are the inscriptions given in the collection, rather than necessarily the known original source of the extracts. For a number of these, the inscription may well be mistaken, but the accurate source is of considerably lesser interest than the source that was believed to have been used.

leave open the possibility that Bernard's reference to the 'old law' was referring to that biblical law rather than the laws of men, and that the 'new law' to which he referred was in fact the remainder of the canons and decretals that he collected together in his *Breviarium*, regardless of the date they were written.

III. Decretal Collections' Contents and 'New Law'

The final focus is the contents of other collections and whether they represent a concerted effort on the part of the compilers to gather together only newer law. Given the complexity of the collections, it is difficult to find one answer to such a broad, dogmatic, question. To begin with, the collections have different formats: some are stand-alone collections that have survived in manuscripts with a variety of other material, while others are part of larger accumulations of canonical material; some are lawyers' handbooks, written in scrawling hands that verge on the barely-legible, while others are beautiful display manuscripts. London, British Library, Royal 10.B.iv, for example, contains the early English 'Canterbury' collection alongside other legal materials, including at least one *ordo*.⁵⁸ Others are reminiscent of appendices: Erlangen, Universitätsbibliothek, 342 sees a systematic collection falling after a copy of Gratian's *Decretum*; other examples of a similar phenomenon include London, British Library, Arundel 490, and Bernkastel-Kues, Hospitalbibliothek, 229, where earlier collections are appended to copies of the *Decretum* and an abbreviation respectively, while the *Fontanensis* and *Belverensis* collections are incorporated into manuscripts containing non-canonical accumulations.⁵⁹ Even when they are divided into subject-based titles, most of the early decretal collections are higgledy-piggledy collections of material. They are not deliberately chronologically organized. Equally, these collections were not drawn up using the idiosyncratic structure of dialectic employed in the *Decretum* and, with the important exception of the *Francofurtana*, rarely used dicta or lengthy rubrics to convey the opinions of their compiler.⁶⁰ Compared with the great systematic collections like the *Panormia* or the *Decretum* of either Ivo or Burchard, these collections are also small. The

⁵⁸ London, British Library, Royal 10.B.iv, various; see Linda Fowler-Magerl, *Ordo iudiciorum vel ordo iudiciarius*, Ius Commune Sonderheft 19 (Frankfurt, 1984), pp. 273–89 and 297–300 give two separate *ordines* found in the London manuscript.

⁵⁹ Erlangen, Universitätsbibliothek, 342, fols 291ra–306va = *Erlangensis*, following a copy of Gratian with the *Ordinarius Magister* gloss apparatus. London, British Library, Arundel 490, fols 210–21, see Kuttner, *Repertorium* (see above, n. 13), p. 281, Walther Holtzmann, "Collectio Eberbacensis," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 17 (1928), 548–55. Bernkastel-Kues, Hospitalbibliothek, 229, fols 67r–123v, see Kuttner, *Repertorium* (see above, n. 13), p. 291, Holtzmann-Cheney (see above, n. 8), pp. 66–74.

⁶⁰ *Collectio Francofurtana*, ed. Landau and Drossbach (see above, n. 8), xxi, c. 13 = 174, for one example.

three collections titled *Decretum*, so that of Burchard, Ivo, and Gratian, incorporated 1,785, 3,760, and 3,945 extracts respectively.⁶¹ In contrast, the largest of the late-twelfth century decretal collections, the *Breviarium*, has 920 extracts. Most of the ‘primitive’ collections, including *Berolinensis I*, have between 100 and 200 chapters; in some cases, as in the *Dunelmensis* and *Fontanensis* collections, that total is made up of three smaller collections, each with around 50–60 texts.⁶²

The collections have also been subjected to implicit manipulation, in part a result of the focus on the recent papal letters amongst their contents. To re-adjust that manipulation gives some intriguing results. In 1234, when the *Liber extra* was promulgated, it contained sections from 599 of the 13,700 or so letters known to have been sent in the years between 1143 and 1198, meaning that four and a half per cent of the letters sent at the time were incorporated into its contents.⁶³ In total, Holtzmann estimated that just over 1,050 discrete letters were incorporated into the collections in one state or another, meaning that slightly less than eight per cent of contemporary letters known to have been sent were included in the collections. At the same time, the *Liber extra* contains 60 letters taken from the Register of Gregory the Great, presumably via the *Breviarium*—or about seven per cent of the enregistered letters, so those which are known and which would have been known in the twelfth century, when Gregory’s *Register* became a widely read source again.⁶⁴ Despite its date, therefore, the *Liber extra* contained a similar proportion of Gregory’s surviving letters as of did recent papal decretals, a fact that becomes even more stark when the extent of the loss suffered by the twelfth-century letters is taken into account. Far more letters were sent than have survived, meaning that the proportion of letters considered to have enough legal value to be included in the collections was much lower. 22 per cent (184 in total) of Gregory’s registered letters, plus eight apocrypha, had already been incorporated into the *Decretum* in its second form,

⁶¹ For Burchard, see Fowler-Magerl, *Clavis canonum* (see above, n. 8), passim; for Ivo, see Brett’s lists available at <https://ivo-of-chartres.github.io/decretum.html>, with date stamp of 2014-06-03; for Gratian, see Winroth, *Making of Gratian’s Decretum* (see above, n. 1), p. 122.

⁶² For the analysis of *Berolinensis I*, which has 126 chapters, see Josef Juncker, “Die *Collectio Berolinensis*. Ein Beitrag zur Geschichte des kanonischen Rechts im ausgehenden zwölften Jahrhundert,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung* 44 (1924), 284–426, with an analysis on pp. 348–407, including the canons of the 1179 Lateran council; for *Dunelmensis* see above, n. 31 and below n. 81; for *Fontanensis*, see n. 24 above.

⁶³ *Corpus iuris canonici*, ed. Emil Friedberg, 2 vols (Leipzig, 1879–81), 2:xii–xiv; for projected numbers of papal letters, see Rudolf Hiestand, “Die Leistungsfähigkeit der päpstlichen Kanzlei im 12. Jahrhundert mit einem Blick auf den lateinischen Osten,” in *Papsturkunde und europäisches Urkundenwesen. Studien zu ihrer formalen und rechtlichen Kohärenz vom 11. bis 15. Jahrhundert*, ed. Peter Herde und Hermann Jakobs, Archiv für Diplomatik. Beiheft 7 (Cologne, 1999), pp. 1–26, at p. 23.

⁶⁴ *Corpus iuris canonici*, ed. Friedberg, 2:xii.

meaning that just shy of a third of Gregory's letters were included in the two principal contemporary canonical collections that would eventually form the *Corpus Iuris Canonici*. Statistically, therefore, while Gregory's letters represent a small proportion of the *Extra*, the collection represents a comparatively large proportion of Gregory's letters for one which is supposed to represent 'new law'. Such a statistical comparison is at best inexact, particularly as the absence of surviving twelfth-century registers makes it difficult to know which sort of documents were enregistered, and why.⁶⁵ Nevertheless, it can be assumed that during the processes of compiling the Register an amount of pre-selection would have taken place; the known contents seem to suggest that the Registers were weighted toward letters perceived to have a significance or long-term impact. Even taking these caveats into account, the brutal point is that up-ending the approach can significantly change the perspective on these late-twelfth century collections. In this case, it was not just recent papal decretals in which the clerics were interested, but ancient ones too, and the proportion of the letters included in the collections becomes important.

So where does that leave the 'new law'? There is clearly something different about certain of the English collections. The 'Worcester' collection mentioned above clearly preferred decretals, as shown in the title rubrics, and recent conciliar provisions, including the canons promulgated at Tours in 1163 and the Lateran in 1179, are absent from the collection.⁶⁶ In fact, it contains only two excerpts from conciliar canons, both of which were misattributed to letters of Alexander III; one is from the early years of the Church, and one much later.⁶⁷ Furthermore, there is only one chapter containing pre-Gratian material, and that is a confusing hotchpotch of extracts from multiple sources present in a number of early collections.⁶⁸ The extent of the absence of this non-decretal material, especially when

⁶⁵ For some of the literature, see e.g. Uta-Renate Blumenthal, "Papal Registers in the Twelfth Century," in *Proceedings of the Seventh International Congress of Medieval Canon Law, Cambridge, 23–27 July 1984*, ed. Peter Linehan, MIC Subsidia 8 (Vatican City, 1988), pp. 137–51; Kenneth Pennington, "Epistolae Alexandrinae: A Collection of Pope Alexander III's Letters," in *Miscellanea Rolando Bandinelli, Papa Alessandro III*, ed. Filippo Liotta (Siena, 1986), pp. 337–53.

⁶⁶ Lohmann, "*Collectio Wigorniensis*" (see above, n. 11); e.g. London, British Library, Royal 10.A.ii, fol. 5ra, which states "here begin the decretal letters of Alexander III [...]".

⁶⁷ Christopher N.L. Brooke, "The Canons of English Church Council in the Early Decretal Collections," *Traditio* 13 (1957), 471–81, at p. 478, and *Wig.* 2.13(f).

⁶⁸ One chapter, *Wig.* 2.13, appears in a bizarre form whereby it is pulled together from ten discrete sections, from a variety of sources and including their own inscriptions: 2.13(a) and 2.13(b) to the archbishop of York; 2.13(c) "from a privilege of pope Adrian"; 2.13(d) "Pope Paschal II"; 2.13(e) "as St Gregory said"; 2.13(f) "Item, from the council of Mainz"; 2.13(g) "Item Pope Gregory"; 2.13(h) "Item Paschal II"; 2.13(i) lacks and inscription; and 2.13(k) "Item from a privilege of Pope Alexander". A similar chapter appears as *Wigorniensis altera* c. 10 and *Belverensis* c. 11, see Duggan, *Twelfth-Century Decretal Collections* (see above, n. 14), pp. 154, 156 and e.g. London, British Library, Royal 11.B.ii, fol. 100r–v, while in *Parisiensis I* it appears as separate but consecutive canons: see *Canones-Sammlungen*, ed. Friedberg (see above, n. 16), p. 53 and Paris, Bibliothèque nationale de France, lat. 1596, fols 12v–13v, where Friedberg and Holtzmann's dissection of the canons mostly

combined with the clear statement that the titles contained the “decretal letters of Alexander III”, suggests that it was intentional. Other early English collections, including *Cantuariensis*, one of Holtzmann’s ‘English’ family, also consist almost entirely of decretals, while only 17 chapters of the 579 in the *Appendix concilii Lateranensis* decretal collection date from before 1100.⁶⁹

Yet other collections show a much more limited proclivity to such new law. The continued reference back to earlier texts as late as the collections of the 1170s is highly interesting, but it is also critical to the narrative of the late-twelfth century collections as, in their most successful incarnations, they too incorporated such early texts. The *Francofurtana*, a systematic collection that survives in four manuscripts, contained 132 pre-Gratian texts in its most basic version, with a further 143 texts appearing with no inscription, but which seem to pre-date the 1140s.⁷⁰ Overall, around one third of the *Francofurtana*’s contents pre-dated Gratian. Although some collections of the *Bambergensis* group contain comparatively few pre-Gratian texts, several contain a much larger proportion. *Lipsiensis*, for example, contained 148 pre-Gratian extracts, equating to just over twenty per cent of its contents.⁷¹ In fact, of the systematic collections, the one which seems to have been most limited in its circulation was, in fact, the one which had the lowest proportion of non-decretal material. The *Appendix concilii Lateranensis* survives today in three manuscripts, although a fourth,

holds true. However, one section, consisting of *I Par.* cc. 12–13, lacks the line break characteristic to differentiating between canons in the collection, which goes some way toward suggesting how the accumulation could have occurred, as well as opening up interesting questions surrounding the relationship between *Parisiensis I* and the early English collections. However, for the current purpose the important point is that the chapter begins with an inscription to the archbishop of York, suggesting that the compiler of *Wigorniensis* perceived it as a decretal rather than as a miscellany canon.

⁶⁹ On *Cantuariensis*, see Duggan, *Twelfth-Century Decretal Collections* (see above, n. 14), pp. 162–71; the only two chapters which are not taken from recent papal decretals are *Cant.* 1.26, *Videtur nobis*, purporting to be a letter of an unidentifiable Pope Celestine to the bishop of Florence, and which ultimately formed part of both the *Decretum* as a *palea* at C. 34, q. 6, c. 2 and the *Extra* at 4.18.3, and *Cant.* 3.14, which is c. 1 from Alexander III’s 1163 council at Tours, *Maiores ecclesie beneficiis*, on which see also Robert Somerville, *Pope Alexander III and the Council of Tours (1163)* (Berkeley, 1977), p. 49 and for the canonistic transmission pp. 43–48. For the Appendix, see the vague analysis in *Canones-Sammlungen*, ed. Friedberg (see above, n. 16), pp. 63–84; Peter Landau, “Studien zur Appendix und den Glossen in frühen systematischen Dekretalensammlungen,” *Bulletin of Medieval Canon Law*, n.s. 9 (1979), 1–21, at pp. 1–5; Duggan, “Decretal Collections” (see above, n. 3), pp. 277–70. The chapters in question are 6.5: “Idem ex concilio Africano,” 6.27: “Idem Benedictus papa,” 13.9: “Idem Gregorius,” 13.15: “Idem Johannes papa,” 17.7: “Idem ex registro Gregorii,” 31.6.2: “Ex decretis Gelasii pape cap. 2,” 38.5: “Item gloriosus Clemens in lib. Stromatum,” 38.6: “Item Gregorius Syracusano episcopo,” 43.2: “Item papa Leo tertius,” 43.4: “Item Gregorius Augustino Anglorum episcopo,” 43.5: “Item ex concilio Maguntiensi, cap. primo,” 44.1: “Item Gregorius Augustino Anglorum episcopo,” 45.8: “Idem ex concilio Triburiensi,” 48.2: “Idem Gregorius universis episcopis,” 49.10: “Ex decretis Hormisdas pape,” with an additional chapter given no inscription at 38.7, all available in *Concilia omnia, tam generalia quam particularia* [...], ed. Pierre Crabbe, 2nd ed., 2 vols (Cologne, 1551) and in later collections to Mansi.

⁷⁰ *Die Collectio Francofurtana*, ed. Landau and Drossbach (see above, n. 8), passim; Kuttner, *Repertorium* (see above, n. 13), pp. 295–96.

⁷¹ Leipzig, Universitätsbibliothek, 975, fols 116–53; see also Kuttner, *Repertorium* (see above, n. 13), p. 292; *Quinque Compilationes*, ed. Friedberg (see above, n. 16), pp. 189–208.

now lost, copy also existed in the sixteenth century; it was used mostly, if not exclusively, in England.⁷² In contrast, the most successful of the late-twelfth century collections, the *Breviarium*, used non-decretal material for a third of its contents yet survives in well over a hundred manuscripts.⁷³

The variety of locations for these later-twelfth century collections within their manuscripts has already been noted, particularly with reference to the English collections. For the primitive collections, the location of the collection changes between English material and that from the continent. The majority of the ‘English’ decretal collections appear in manuscripts which contain *legalia* or selections of material but not the *Decretum*. The *Cantuariensis* manuscript, for example, also contains an interesting *ordo* analysed by Fowler-Magerl. The exceptions are the *Dunelmensis* manuscript, which includes a copy of Gratian, and the *Roffensis* manuscript, where the collection falls after the *Dekretabbreviatio* of Omnebene.⁷⁴ In contrast, all five of the collections in Holtzmann’s ‘Italian’ group are found in either a full or abbreviated Gratian manuscripts.⁷⁵ Most of the *Dekretanhänge* are continental in origin and most of these contain a high proportion of earlier material: the majority of texts in the *Dekretanhang* of Heiligenkreuz, Stiftsbibliothek, 44 were not decretals.⁷⁶ While in England, these collections may have been something else entirely, on the continent they were still viewed very much as the texts which wandered outside of Gratian. While Gratian remains the cut-off point, that seems to have been because of its general use rather than because there was a marked difference between the laws.

In fact, the distinction between the ‘English’ collections and those of the Continent carries over into the sender of some of the letters. While a majority of Alexander III’s surviving decretals were sent to English recipients, the reverse is true of earlier papal letters. Individual

⁷² Although the *Appendix* made it to Tours, where it was used in the compilation of *Ur-Bambergensis*: Landau, “Die Entstehung” (see above, n. 27), p. 129 on *App.* and then pp. 134–35; but see Kuttner and Rathbone, “Anglo-Norman Canonists” (see above, n. 36), pp. 283–84 on the use of the *Appendix* solely amongst the Anglo-Norman school of canonists.

⁷³ Gérard Fransen, “La tradition manuscrite de la ‘Compilatio Prima’,” in *Proceedings of the Second International Congress of Medieval Canon Law, Boston College, 12–16 August 1963*, ed. Stephan Kuttner and J. Joseph Ryan, MIC Subsidia 1 (Vatican City, 1965), pp. 56–62, at p. 56.

⁷⁴ Durham, Cathedral and Chapter Library, C.III.1, fols 8va–18va, with intermissions; on London, British Library, Royal 10.C.iv and its ordines, see n. 58 above.

⁷⁵ Berlin, Staatsbibliothek, Phill. 1742 (*Decretum* followed by *Collectio Berolinensis I*); Douai, Bibliothèque municipale, 590 (*Decretum* with fragmentary *Collectio Duacensis* in the flyleaves); Milan, Archivio capitolare di S. Ambrogio, M.57 (*Decretum*, followed by *Collectio Ambrosiana*); Sankt Florian, Stiftsbibliothek, III.5 (*Decretum* with *Collectio Florianensis* following); Bernkastel-Kues, Hospitalbibliothek, 229 (*Decretum* abbreviation followed by *Collectio Cusana*), although note the potential links between Holtzmann’s ‘Italian’ group and northern France outlined in Wei, “Later Development” (see above, n. 39), pp. 155–56.

⁷⁶ Rudolf Weigand, “Die Dekretanhänge in den Handschriften Heiligenkreuz 44, Pommersfelden 142 and München 28175,” *Bulletin of Medieval Canon Law*, n.s. 13 (1983), 1–25, at pp. 3–8.

letters are not found infrequently in the early *Dekretanhänge* or the proto-collections, and these tend to be (although are not limited to) letters of Eugenius III and Adrian IV. Honorius II's *Inherentes* can be found at the end of a number of *Decretum* manuscripts, including in Verona, Biblioteca Capitolare, 184.⁷⁷ All but one of the letters of Eugenius III to survive in the decretal collections were sent to continental recipients, and most of those were Italian.⁷⁸ A majority of the decretals of Adrian IV which entered the later-twelfth century collections had French recipients.⁷⁹ The volume of decretals is a degree of magnitude lower, only 12 and 10 compared to over 700 Alexandrine letters, but it is still a significant point especially given that, as yet, there is no satisfactory answer as to why England became such a hotspot for canon law in the twelfth century. Since Duggan was primarily interested in the role of the decretal collections in English history, it is unfair to criticize him for not looking at the continental collections, but his disinclination to examine that material does over-emphasise the role of the English collections at the expense of others which employed different sources. The point that I want to make here is that simply because the English material is so prevalent in the collections does not mean that only in England were recent papal decretals viewed as important legal texts, and in particular that England was not the only centre for engaging with and developing law in the period between 1140 and 1234. French and Italian clerics were also copying out letters sent to their territories too, albeit on a different scale. Equally, most of the *Dekretanhänge* identified by Kuttner seem to have non-English provenances. Troyes, Médiathèque du Grand Troyes, Fonds ancien 103, for example, has a handful of decretals in its flyleaves; the manuscript was probably Cistercian.⁸⁰ Two of these, one sent to Reims and one sent to Sens, also appear at the end of *Wigorniensis altera*, the oldest extant collection according to Duggan.⁸¹ Elsewhere, the presence of a decretal sent to Treviso in the first

⁷⁷ Verona, Biblioteca Capitolare, CLXXXIV (164), fol. 254rb.

⁷⁸ The letters of Eugenius III in the collections or elsewhere are JL – [WH 332] to Uberto, archbishop of Milan; JL 8963 [WH 415] to 'A', bishop of Florence; JL 9653 [WH 545] to the bishops of Aix-en-Provence, Maguelonne, and Nîmes; JL 9506 [WH 560] to a cardinal priest 'G' and the bishop of 'Aretino'; JL 9659 [WH 595] to the clerics of Urbino and a priest 'Esculapius'; JL 14216 [WH 603] to the chapter of Bordeaux; JL 9654 [WH 625] to Master Omnebene and Arditius, subdeacon of the Roman church; JL – [WH 752] to the abbot of Saint-Denis; JL – [WH 943] to the cardinal deacon of Sant'Eustachio; JL 9667 [WH 1011] to the bishop of Padua; JL 9656 [WH 1015] to Conrad, vicar and clerk of the Romans; and JL – [WH 656*], to G., bishop of Bologna. The exception is JL 8959 [WH 736] to Jocelin, bishop of Salisbury.

⁷⁹ JL – [WH 353*] = Adrian IV to the bishop of Châlons-sur-Marne (Châlons-en-Champagne); JL – [WH 366] = Adrian IV to the archbishop of Sens and the bishop of Auxerre; JL 10445 [WH 344] = Adrian IV to Everard, archbishop of Salzburg; JL 10444 [WH 664] = Adrian IV to Adam, prior of Pontigny; JL 10062 [WH 1049] = Adrian IV to the archbishop of Tours; JL – [WH 454] = Adrian IV to the bishop of Città di Castello; JL – [WH 533*] = Adrian IV to an unknown recipient; JL 10459 [WH 735] = Adrian IV to the monks of Astino. The exception is JL 11660 [WH 134] = Adrian IV to the archbishop of Canterbury.

⁸⁰ Troyes, Médiathèque du Grand Troyes (olim Bibliothèque municipale), Fonds ancien 103, flyleaves; Duggan, "Decretal Collections" (see above, n. 3), p. 255.

⁸¹ London, British Library, Royal 11.B.ii, see Duggan, "Decretal Collections" (see above, n. 3), pp. 257–58 for

section of the tripartite *Dunelmensis* collection demonstrates that the interest in decretals was not the sole preserve of English clerics.⁸² It is one of only two Alexandrine texts in that first section, which otherwise strongly resembles a *Dekretanhang* of the type appended to Innsbruck 80.⁸³ In fact, Holtzmann hypothesized that the entire first section of *Dunelmensis* was extra-English—most probably Italian—in origin, in part on the basis that the decretal to Treviso survives nowhere else. The most likely explanation for its inclusion in the Durham collection, whose later sections were heavily influenced by English material, is that it formed part of an Italian *Dekretanhang* that was later expanded somewhere in England, before making its way to Durham.

IV. Conclusions

A critical argument behind the compilation of the decretal collections is that they were gathered together because local clerics were increasingly focussed on new law. Unfortunately, while some clerics clearly did have such a focus, others looked elsewhere. Saying that the amount of earlier material in the late-twelfth century collections was lower because such a large proportion was included in Gratian is one thing and is most likely accurate; arguing that the decretal collections themselves were conscious choices to rely purely on recent papal precedent is another. For one thing, outside of *Wigorniensis* it is rarely true. Some clerics were explicitly against the widespread use of decretals, so it should come as no surprise that the canonical collections compiled in the later-twelfth century reflect their views as well as the perspectives of those who did prioritise decretals. Taking into account the earlier contents of the collections, or even just switching the emphasis of any statistical or numerical comparison, gives a different perspective on the role played by these later twelfth century collections in the legal environment of the later-twelfth century.

By the time of the *Liber extra* in 1234, papal letters were of great importance in ecclesiastical government, while the study of and interaction with canon law was a sophisticated enterprise. Nevertheless, the collections that preceded the *Extra* were not purely ‘decretal’ collections and it makes more sense to consider them within the sphere of earlier collections of canon law rather than necessarily as a distinct and new creation, important purely because it

literature.

⁸² Durham, Cathedral and Chapter Library, C.III.1, fols 5v–18r; Holtzmann-Cheney (see above, n. 8), pp. 75–99; Duggan, *Twelfth-Century Decretal Collections* (see above, n. 14), pp. 78–79; the decretal to Treviso is *I Dun.* 50, JL – [WH 417], and the other Alexandrine text in that early section is JL 13792/14190/14202 [WH 84], sent by Alexander III but in this case with an inscription to Alexander II rather than his later successor.

⁸³ Innsbruck, Universitäts- und Landesbibliothek Tirol, 80, fols 273–77; an amount of the material here is in fact in common with one of the Durham collections: Kuttner, *Repertorium* (see above, n. 13), p. 286.

represented some thing novel. The two broadest areas here, which may help understand the importance of letters in the twelfth century, are research in the broader field of letter collections and the continued interest, amongst scholars of eleventh-century canon law, in the florilegia and farraginous collections which, in fact, the early decretal collections miMIC The distinctions between and within the decretal collections have helped scholars to understand the connections and differences between the collections. But the strict definitional archetype they perpetuate can veil the realities of late-twelfth century canon law. Regardless of where the collections originated, the most successful in the long-term were those which combined decretal and earlier material, particularly in the case of the *Breviarium*.

In the later-twelfth century, 'new law' was something that was not yet tangible: there was no *Liber extra* to hold up as a gold standard. Ultimately, for there to be a 'new law' the old had to be widely accepted, a process which took decades. Understanding the contribution made by canonists later in the twelfth century to that process means going beyond the basic distinctions all too often drawn between terms and focussing as much on the continuities in legal practice and legal collections as on the differences that began to appear.